

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4919 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 - No.

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PATEL KUVARABHAI VASHABHAI

Versus

PATEL NAVABEN URABHAI

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Appearance:

MR JD AJMERA for Petitioner

MR MC SHAH for Respondent No. 1

MR.ST MEHTA,ADDL.PUBLIC PROSECUTOR for  
Respondent No.2.

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/02/97

ORAL JUDGEMENT

This petition is preferred by husband who has been ordered to pay maintenance to his estranged wife and two minor children.

Opponent No.1 preferred Misc.Cri.Applicatrion No.25/89 before the learned Judicial Magistrate, First

Class, Deodar under section 125 of the Criminal Procedure Code. She claimed that her husband i.e. the present petitioner, had deserted her and he was in the habit of beating and ill-treating her and the children. In view of the compromise arrived at earlier the petitioner had transferred a piece of agricultural land admeasuring around 3 acres in the name of the applicant wife. However, she was not permitted to enter the said village for cultivating the land. She therefore, could not maintain herself and her children and claimed maintenance to the tune of Rs.1500/- from the present petitioner. She stated that the petitioner had business of motor re-winding and had agricultural land and was earning around Rs.50,000/- every year.

The said claim for maintenance was contested by the petitioner. He contended that in view of the earlier settlement the application under section 125 was not maintainable and was barred by the principles of res judicata. He further contended that he was ready and willing to maintain the applicant and the children. Further he maintained that the applicant was taking agricultural produce of the land transferred in her name and that her parents were rich people. Thus the applicant was able to maintain herself and the minor children.

Considering the rival contentions, learned Judicial Magistrate, First Class, held that the applicant was driven out of her matrimonial home and was deserted by her husband, the present petitioner. He also held that the applicant was not permitted to cultivate the land transferred in her name and that she was unable to maintain herself and her children. Learned Magistrate took the view that the principles of res judicata were not applicable to the proceedings under section 125 of the Criminal Procedure Code. He did not believe the deposition of the petitioner in view of the contradictions in his deposition. He held that the petitioner's readiness and willingness to stay with the applicant and the children was not bona fide. He held that the petitioner was earning around Rs.3,000/- every month. He, therefore, proceeded further to allow the application under his judgment and order dated 30th June, 1990 and awarded monthly maintenance of Rs.360/-, Rs.300/- and Rs.240/- to the applicant and the minor children respectively.

Feeling aggrieved the petitioner preferred Criminal Revision Application No.71/90 before the learned Additional Sessions Judge, Banaskantha. Learned

Additional Sessions Judge under his judgment and order dated 29th May, 1993, rejected the aforesaid revision application. He also rejected the revision application preferred by the applicant for enhancement of the maintenance for herself and her children.

Feeling aggrieved, the petitioner has preferred this application under section 482 of the Code of Criminal Procedure for quashing. In view of the concurrent findings of fact by both the courts below, it cannot be held that the petitioner's willingness to accept his wife and children is bona fide. No case has been made out for interference by this court under section 482 of the Code. The courts below have rightly held that the principles of res judicata do not apply to the proceedings initiated under section 125 of the Code. In the circumstances, this petition is dismissed.

Rule is discharged.

Interim relief is vacated. The opponent No.1 shall be at liberty to withdraw the amount of maintenance deposited in this court by the applicant.

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